IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R.

S.B.Criminal Revision Petition No.1101/07
Dinesh through natural guardian father Shri Sahi Ram S/o Mansukh Ram.
Vs.
State of Rajasthan

Date of Order : 01/10/2007

PRESENT
HON'BLE MR. JUSTICE H.R. PANWAR

Dr. S.S.Jodha for the petitioner.
Mr. Ashok Upadhyay, Public Prosecutor.

BY THE COURT:

Issue notice for final disposal. Mr. Ashok Upadhyay, public prosecutor accepts the notice on behalf of respondent State. With the consent of learned counsel for the parties, the revision petition is finally heard and decided.

Heard learned counsel for the parties and perused the orders passed by the courts below and challan papers.

This criminal revision petition under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the Act' hereinafter) has been filed by the petitioner, who is juvenile through his natural guardian father, challenging the order dated 08.08.2007 passed by learned Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Merta, district Nagaur (for short 'the Appellate Court' hereinafter) in Criminal Misc. (Bail) Application No. 02/2007 pertaining to FIR No. 41/2007 Police

Station, Jayal, on an appeal filed by the petitioner against the order dated 21.6.2007 passed by Juvenile Justice Board (Chief Judicial Magistrate, Nagaur), dismissing the application filed by the petitioner under Section 12 of the Act seeking bail.

Briefly stated the facts of the case, to the extent they are relevant and necessary for the decision of the revision petition, are that a crime report No. 41/2007 dated 16.6.2007 was registered with Police Station, Jayal for the offences under Sections 376, 450 IPC and Section 3 (1) (xii) of the SC/ST (Prevention of Atrocities) Act against the petitioner. The petitioner, who is delinquent juvenile, was arrested on 18.6.2007. After investigation, the police filed charge sheet against the delinquent juvenile before the Juvenile Justice Board, Nagaur. Thereafter, the petitioner through his father and natural guardian moved an application under Section 12 of the Act seeking bail before the Juvenile Justice Board, Nagaur. By order impugned dated 21.6.2007, the Juvenile Justice Board declined to release the petitioner on bail on the ground that the investigation in the matter is going on and there are serious allegations against the petitioner for committing the offences under Section 376 IPC and Section 3 (1) (xii) of the SC/ST (Prevention of Atrocities) Act as also there is possibility of exposing the delinquent juvenile to moral, physical and psychological danger in case he is released on bail. The

petitioner challenged the order dated 21.6.2007 before the learned Appellate Court. The learned Appellate Court dismissed the appeal filed by the petitioner on the ground that there is serious allegation of committing rape in the night on the prosecutrix aged 17 years belonging to Scheduled Caste and the release of the petitioner would defeat the ends of justice.

Learned counsel for the petitioner has relied on a decision of this Court in Jeeturam Vs State of Rajasthan 2005 (1) R.Cr.D. 372 (Raj.) wherein this Court while considering Section 12 of the Act, held that the Act is beneficial and social oriented legislation which needs to be given full effect by all concerned whenever the case of juvenile comes before them. In absence of any material or evidence of reasonable ground to believe that the delinquent juvenile, if release on bail, is likely to come into association with any known criminal or expose him to moral, physical or psychological danger, it cannot be said that his release would defeat the ends of justice. On the contrary, keeping in view the legislative intent in enacting the Act, the juvenile offender deserves to be released on bail.

Section 12 of the Act reads as under:-

> **"Section 12. Bail to Juvenil.-** (1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on

> bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.
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> (2)When such person having been arrested is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.
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> (3)When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order."

From the perusal of Section 12 of the Act, it is clear that a delinquent juvenile ordinarily has to be released on bail irrespective of nature of offence alleged to have been committed by him, unless it is shown by evidence that if he is released on bail, there appear reasonable grounds for believing that the release of delinquent juvenile is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. Section 12 of the Act is a special provision injuncting the courts from refusing bail to a delinquent juvenile except for the reasons stated in the section itself, i.e. if he be so released there are reasonable grounds for believing that he will

come into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

At the time of consideration of bail under Section 12 of the Act, the merit or nature of offence has no relevancy. The language of Section 12 of the Act, using the word "shall" is mandatory in nature and providing non-obstante clause by using the expression "notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time-being in force be released on bail" shows the intention of the Legislature to grant bail to the delinquent juvenile offender by releasing him on bail who is arrested or produced before a Court; however, with exception to release him on bail if there are reasonable grounds for believing that his release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. It is for the prosecution to bring on record such material while opposing the bail and to make out any of the grounds provided in this Section which may persuade the court not to release the juvenile on bail.

The Juvenile Justice Board while refusing to grant bail observed that there is serious allegations against the petitioner committing the offences under Section 376 and Section 3 (1) (xii) of the SC/ST Act. However, without there

being any material suggesting that if the delinquent juvenile if released on bail there are reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice, the Juvenile Justice Board as well as the learned Appellate Court merely incorporated in the orders impugned the language of Section 12 providing the exceptions to grant bail, but there appears to be no material to show as to how and in what manner there are reasonable grounds to believe that if he is released on bail he will come into association with any known criminal or expose him to moral, physical or psychological danger. The Act is beneficial and social-oriented legislation which needs to be given full effect by all concerned whenever the case of juvenile comes before them. In absence of any material or evidence of reasonable ground to believe that the delinquent juvenile, if release on bail, is likely to come into association with any known criminal or expose him to moral, physical or psychological danger, it cannot be said that his release would defeat the ends of justice. On the contrary, keeping in view the legislative intent in enacting the Act, the juvenile offender deserves to be released on bail. In this view of the matter, both the courts below have erred in declining bail to the petitioner.

Consequently, the revision petition is allowed; the

impugned orders passed by the courts below are set aside and it is directed that petitioner Dinesh S/o Shri Sahi Ram be released on bail provided his father, the natural guardian, furnishes a personal bond in the sum of Rs.10,000/- with a surety in the like amount to the satisfaction of the Juvenile Justice Board with the stipulation that on all subsequent dates of hearing, he shall produce the juvenile before the said Board or any other court during pendency of the inquiry in the case and the natural guardian shall keep proper look-after of the delinquent child and keep him away from the company of known criminals.

(H.R. PANWAR), J.

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